A SYNOPSIS STATEMENT

ON

VICTIMIZATION OF HUSBANDS-A CRITICAL ANALYSIS OF INDIAN LAW

FOR THE PARTIAL FULFILMENT FOR THE AWARD OF THE

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Prof. DR. R.K.PATNI

DEAN FACULTY OF LAW & GOVERNENCE

JAYOTI VIDYAPEETH WOMEN'S UNIVERSITY - [JVWU],

JAIPUR, RAJASTHAN

''बेटी बचाओ, बेटी पढ़ाओ''

SUBMITTED BY:

JUHI OJHA

J. V. WOMEN'S UNIVERSITY - [JVWU],

JAIPUR, RAJASTHAN

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Of

INDIAN LAW

ABSTRACT:

"*If the law fails to respond to the needs of changing society, then either it will stifle the growth of the society and chock its progress or if the society is vigorous enough, it will cast away the law which stands in the way of its growth. Law must therefore contently be on the move adapting itself to the fast changing society and not behind".* - Justice Bhagwati.[1]

The matrimony plays a significant role in the social set-up of a nation. It is the basis of the institution of marriage which signifies a complete physical, mental and spiritual union of man and woman as husband and wife to establish a family. Happy homes are sign of a healthy and prosperous society. However due to emergence of industrialized societies and result of social awareness amongst people, especially in females about their right of equality and personal liberty, the meaning of stability in the context of marriage has been changing gradually in different span of times[2].

The status of women in India has been subject to many great changes over the Past few millennia[3], with a decline in their status from ancient to medieval times to the promotion of equal rights by many reformers. In modern India Women's rights under the Constitution of India mainly include equality,

[1] *case of National Textile Workers' Union v. P.R. Ramakrishnan, (1983) 1 SCC 228, at page 256*

[2] *"Institution Of Marriage-Judicial Approach", All India Reporter, January, p.6,(2010 Prof. Ajay Kumar).*

[3] *"Status of women in Hindu society", in Jayapalan, N., Indian society and social institutions, New Delhi, India: Atlantic Publishers and Distributors, p. 145 Jayapalan, N. (2001).*

dignity, and freedom from discrimination; additionally, India has various statutes governing the rights of women[4].

Freedoms of education, job opportunities, economic independence and social attitude have brought a great change in the status of women. Most of the women who were used to be home makers now are taking steps ahead along with men. The specific laws for women are misused by errant women and police officers. The cry of victimized husbands and their relatives is not heard either in courts or in society. The practice says that real purpose of the women related specifies laws are misused and thereby husbands suffer for no fault[5]. So there is need to change the mined set about the law relating to women. It is not fair to pre-establish that domestic violence happens to wife only. In India and elsewhere in the world, there are no special laws for male. There is no protection of men in Domestic Violence Act, 2005, there is no provision like Section 498B in Indian Penal Code, there is no provision like Section 125A in Code of Criminal Procedure i.e. maintenance to husbands under the Act[6].

The Researcher is of the opinion that this study would reveal the hidden suffering of men who often faces violence at domestic place. It is quite an evidential fact that men suffer more than women for domestic violence as both society and law doesn't provide with enough solution for this particular issue. It will reflect the effects and challenges that a male victim of domestic violence has to face.

In this paper the Researcher has sincerely analyzed the existing Laws and has taken an effective role of highlighting victimization of husbands under the garb

[4] "*Women and law: from impoverishment to empowerment*'. Lucknow: Eastern Book Company. Parihar, Lalita Dhar (2011).

[5] *P.K. Das, Law relating to cruelty to husband, (2008), p.1*

[6] *P.K. Das, Law relating to cruelty to husband, (2008),*

of Domestic Violence laws and its atrocious consequences and tried to suggest a solution both social and legal to solve this new type of problem.

STRUCTURE OF THE SYNOPSIS:

This Synopsis statement is divided into five different chapters.

Chapter 1: Introduction

Provide an Introduction, its Objectives & Hypothesis.

Chapter 2: Literature Review

Provide literature review analysis of past papers and researchers pertaining to the topic.

Chapter 3: Research Methodology

This chapter is an elaboration of the research methodology adopted for the research study.

Chapter 4: Findings and Analysis

This chapter is a presentation of the findings from the adopted research methodology and literature review.

Chapter 5: Conclusion and Suggestions

The conclusions and recommendations are drawn and presented in light of the theoretical literature review.

CHAPTER-1

INTRODUCTION:

"*Sick marital relations pose a problem not merely for the related spouses but they have much wider implications. They have their repercussions and impact upon society and the same can give rise to social problems. Harmony in society in inconceivable where there are dissatisfied parties that make a home which is one of the most crucial units in the hierarchy of social institutions... Broken homes, strained marital relation share only a source of extreme anguish for the individual concerned, they are also symptomatic of social malaise and call for rational and sympatric approach*."[7]

According to the Rig Veda Marriage (Vivah) was one of the sacred sacraments which every individual had to undergo and was also the second stage, Grihasth ashram (householder) among the four stages of life prescribed in the Ashram dharma. The term dampati used in the Rig Vedic period designates the mistress as well as the master of the house that is both husband and wife. The purpose of marriage was to enable a man, by becoming a householder, to perform sacrifice to the Gods and to procreate sons. According to ancient scriptures of India, 'marriage is not a temporary contract to serve the momentary physical demand or to enjoy good company for some time and then to lapse at the slightest inconvenience. It is a permanent union, even if there is any unpleasant change of circumstances or fortune, in life only to grow stronger and more stable'[8]. 'The primary function of marriage was the continuity of the race

[7]A Speech delivered at the inaugural session of the seminar on Hindu Marriage Act and Special Marriage Act, ILI, New Delhi, (1978) Mr. Justice (Retd.) H.R. Khanna of the Supreme Court of India

[8] Layman's Introduction to Philosophy and Life,by Bikrama Nand Bahuguna page 183,Mittal Publications,2009

through the procreation of children and to ensure transmission of the cultural heritage. During those times the family rather than the individual was regarded as the social and political unit and hence marriage was regarded as a sacrament. Marriages were regarded as sacred religious unions brought about by divine dispensation.[9]

With the changing society especially Globalization has posed a major challenge to the institution of patriarchy in India. With the growing education, the Indian women are taking up different jobs and achieving social mobility and have also begun to stand up for their rights. Now the nuclear families have become more common, it has become easier for women to assertively claim their rights and ask for equality in every walk of life. Marrying within the same caste has become less important, and women have in many cases reserved the right to marry whoever they choose irrespective of caste.[10]

The status of women in India has been subject to many great changes over the Past few millennia[11], with a decline in their status from ancient to medieval times to the promotion of equal rights by many reformers. 'In modern India Women's rights under the Constitution of India mainly include equality, dignity, and freedom from discrimination; additionally, India has various statutes governing the rights of women'[12].

During research work, Researcher observed that the breakdown of marriages in the society has been increasing in great number whether by fault of husband or wife, but cases of domestic violence are filed by wife against husband and in-

[9] https://ithihas.wordpress.com/2016/10/26/institution-of-marriage-in-ancient-india/
[10] https://www.quora.com/What-are-the-positive-and-negative-effects-of-globalization-o
[11] *Indian society and social institutions*, New Delhi, India: Atlantic Publishers and Distributors, p. 145 Jayapalan, N. (2001).
[12] "*Women and law: from impoverishment to empowerment'*. Lucknow: Eastern Book Company. Parihar, Lalita Dhar (2011).

laws under Domestic Violence Act-2005 and 498-A of IPC to claim maintenance and divorce. It was also observed that all complaints were not filed bona-fiddly and were used as a tool to blackmail and harassment of husbands and other family members.

According to Black's Law Dictionary, "Domestic violence means violence between members of the households, usually spouses, an assault or other violent act committed by one member of a household against other". Generally speaking domestic violence implies physical or psychological domination of a family member by another member or partner. Its most recognized form is spousal abuse, which includes physical violence, sexual abuse, emotional abuse, intimidation, economic deprivation or threats of violence. Domestic violence manifests verbal, physical or psychological abuse often in forms that are more subtle than violence elsewhere in the society[13].

There are many provisions for the protection of the women, which has got recognition from our constitutional law. According to the 'Section 498-A' of the 'IPC' the wife and her parental family can charge any or all of the husband's family of physical or mental cruelty but genuineness of the case has to be looked into by the court as this section is cognizable, non-compoundable and non-bail able in nature.

'Though there are widespread complaints and even the judiciary has taken cognizance of large scale misuse, there is no reliable data based on empirical study as regards the extent of the alleged misuse'.[14]

Keeping the related reports in mind the researcher in this paper attempts to cover situations of misuse of Women Protection laws. Further, the paper gives

[13] *Justice A.S. Anand: "victims of crime-The unseen side", (1198) 1 SCC (J) 3)*

[14] *Law Commission, Government of India, Section 498A IPC Report No.243August2012.*

a detailed analysis of the various provisions of Domestic Violence Act and deriving its legislative intent and tries to scrutinize the potential of these provisions of the Domestic Violence Act to be misused by the wife against husband.

Objectives:

The main objective to carry out this study is to analyze and discuss the types of domestic violence laws that are being misused against men in the society, and as to how far do the law provides response to such taboo on the following grounds:

- To analyze Women Protection laws that can be misused by the wife against husband for victimizing them in Indian Legal Scenario with the help of related judgments,
- To examine the long term implication and application of these landmark judgments.
- To give some suggestions as the Researcher feels relevant.

Hypothesis:

Growing misuse of Women Protection laws by the wife against husband to victimize the husband in society and using these laws as weapon to unleash personal vendetta on their husbands and innocent relatives.

CHAPTER -2

REVIEW of LITERATURE

Since olden days it was believed that the women always suffer from domestic violence. They are being treated badly by men and are the victims of domestic violence. It is a general perception that men cannot be subjected to domestic violence. It was observed that there are no such laws have been formulated for men, as there are laws for woman victims suffering from domestic violence, yet steps like awareness program are being initiated in the society to spread awareness about the domestic violence taking place against the men. It was observed that some NGOs are helping victimized men by online advice from domestic violence. Now the taboo which was prevailing for many years that only women are victims of domestic violence is fading out slowly and a new concept is cropping in that men can also be victim of domestic violence and they too need the social and legal protection.

According to the Justice Mali math Committee's report on Reforms of Criminal Justice System:

"The harsh law, far from helping the genuine victimized women, has become a source to blackmail and harassment of husbands and others. Once a complaint (FIR) is lodged with the Police under s.498A/406 IPC, it becomes an easy tool in the hands of the Police to arrest or threaten to arrest the husband and other relatives named in the FIR without even considering the intrinsic worth of the allegations and making a preliminary investigation. When the members of a family are arrested and sent to jail, with no immediate prospect of bail, the

chances of amicable re-conciliation or salvaging the marriage, will be lost once and for all. The possibility of reconciliation, it is pointed out, cannot be ruled out and it should be fully explored. The imminent arrest by the Police will thus be counterproductive…..The long and protracted criminal trials lead to acrimony and bitterness in the relationship among the kith and kin of the family. Pragmatic realities have to be taken into consideration while dealing with matrimonial matters with due regard to the fact that it is a sensitive family problem which shall not be allowed to be aggravated by overzealous/callous actions on the part of the Police by taking advantage of the harsh provisions of s.498A of IPC together with its related provisions in CrPC. It is pointed out that the sting is not in s.498A as such, but in the provisions of CrPC making the offence non-compoundable and nonbailable[15]*."*

In reviewing the Court judgments regarding Section 498A it was found that comments of Justice Mali math Committee's report are supportive to the Court Judgments passed in the cases related to sec. 4989-A.

Reviewing Sec. 498-A of IPC it was observed that it is a criminal law and not a civil law, which is defined as, *"Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. The offence is Cognizable, Non-compoundable and Non-bail able".* During review it was noticed that as the section is *non-bail able*, the defendants have to appear in court and get bail from the court, *non-compoundable* (complaint can't be withdrawn) and *cognizable* (register and investigate the complaint), but in practice most of the time defendants were arrested before investigation. The fact that the Section 498-A, being a cognizable and non-bail

[15] *Law Commission, Government of India, Section 498A IPC Report No.243August2012, Page 10-11.*

able offence, has empowered the dissatisfied wives with a power full weapon rather than a shield. Now they can use the simplest way to harass the husband and his relatives by getting them arrested under this provision. Further reviewing the Act 46 of 1983[16] and reading with Sec.498-A, it was understood that Sec 498-A can be invoked by wife or daughter-in-law or her relatives. Thus any wife or daughter-in-law, whose demands were not met, could make a written complaint of dowry harassment against her husband & his relatives to a nearby police station. As a result in pursuance of the Act the husband, his old parents and relatives are immediately arrested without sufficient investigation and put behind the bars on a non-bail able terms. Even if the complaint is false, husband & relatives shall be presumed guilty until they prove that they are innocent.

In these cases family of husband has to go through a lot of mental torture and harassment by the police. It was observed that in Criminal Appeal no.1265 of 2017 Rajesh Sharma & ors *Vs* State of U.P. & Anr.[17] Supreme Court of India Learned ASG submitted that 'though Section 498A was enacted to check unconscionable demands by greedy husbands and their families which at times resulted in cruelty to women and also suicides but He, however, accepted that there is a growing tendency to abuse the said provision to rope in all the relatives including parents of advanced age, minor children, siblings, grand-parents and uncles on the strength of vague and exaggerated allegations without there being any verifiable evidence of physical or mental harm or injury'. At times, this results in harassment and even arrest of innocent family members, including women and senior citizens[18].

[16] An act, passed on Dec 26, 1983,to amend the Indian Penal Code, the Code of Criminal law second amendment Act 46 of 1983

[17] Criminal Appeal no.1265 of 2017, [arising out of special leave petition (crl.)no.2013of2017].

[18] *Supreme Court of India Criminal Appeal no.1265 of 2017 [arising out of special leave petition (crl.)no.2013of2017]Rajesh Sharma &ors Vs State of U.P. & Anr.*

It was also to note that former Secretary Steel, Government of India, Aruna Sharma, hitting on the 'narrow approach' to women's rights, says men are being falsely trapped in judicial maze and losing faith[19]. She believes this has led to a rampant misuse of law by women, asserting that such "activism" is resulting in men losing faith in the judiciary and the institution of marriage. In her point of view the judiciary unduly favours women, leading to men being falsely trapped in an endless judicial maze. In a bid to attract attention to the issue, she has also suggested some remedies by writing a letter to the Ministry of Women and Child Development, urging to take appropriate remedial measures to restore balance in key legal provisions. She has also suggested eight point agenda to curb the misuse of women-centric Laws thereby tempering the system skewed unduly in the favour of women.

Madras High Court in the case of Tr. Ramaiah vs. State through its ruling also cleared that though the objective behind the law is to check and curb the menace of dowry and at the same time, law is to save the matrimonial homes from destruction, but "Arrest of the in-laws is often made simply to satisfy the ego and anger of the complainant[20]."

In an earlier case, Sushil Kumar Sharma vs. Union of India & Others the Supreme Court lamented that "in many instances, complaints under sec.498A were being filed with an oblique motive to wreck personal vendetta. In such cases acquittal of the accused does not in all cases wipe out the ignominy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. It may therefore become necessary for the Legislature to find out ways how the makers of frivolous complaints or

[19] *https://theprint.in/report/top-woman-ias-demands-definition-wife-says-women-misusing-laws/15440/*

20 in M.P. No.1 of 2008 in Cr. O.P. No.10896 of 2008 dated 4th August, 2008

allegations can be appropriately dealt with……. It was also observed that by misuse of the provision, a new legal terrorism can be unleashed[21]"

CHAPTER 3

RESEARCH METHODOLOGY

This study is based on theoretical research methodology. In order to do a research on this topic, the Researcher required journals, magazines, previous research works and statistical charts etc. to know exact facts about it. It can also be termed as a qualitative study for it mainly uses facts and data about the different aspect of this topic.

Source of Information

- Case studies of cases already resolved.
- Other sources-Books, journals, magazines, previous research works, published and unpublished articles, news paper releases, seminar reports, notices & brochures.
- Web references

[21] Writ Petition (C) No. 141 of 2005 - Sushil Kumar Sharma vs. Union of India & Others (2005)

CHAPTER -4

RESULT & DISCUSSIONS (CASE LAWS)

It is true that differences may arise in a family anytime since there may be lack of proper understanding between the couple. Family members & friends try to work on this and help to sort out their differences. But some women approach the court even for minor issues and thus, men feel threatened by the enactment. Domestic violence is a silent crisis that happens daily and with impunity behind closed doors and within close relationships in many Indian homes. Domestic Violence isn't just hitting, or fighting, or an occasional argument. It's an abuse of power. Both men and women can be abused; the abuser tortures and controls the victim by calculated threats, intimidation, and physical violence. Children in homes where there is domestic violence are also abused or neglected. Although the woman is usually the primary target, violence is sometimes directed toward children, and sometimes toward family members and friends[22].

The real purpose of any act is to provide a law which helps to make a society which does not discriminate among each other; it provides a remedy against the criminal or civil activities which are in violation of any law. On the similar ground 'Protection of Women against Domestic Violence Act- 2005'• was

[22] 'Domestic Violence Act <https://www.lawteacher.net/study-guides/family-law/domestic-violence-act.php?vref=1>

passed which provides security to women against the violence done by their male partner or his family member.

Definition of Domestic violence & analysis of its various:

For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it

(a) Harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person."•

This definition gives a wider scope to make domestic violence a criminal activity, as it says domestic violence includes any physical, sexual, verbal and emotional abuse. The Sec. 1 of PWDVA states: "*An Act to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto*".• Here, rights are given only to women and nothing in this act shall deal with rights of men under domestic violence, though it can easily be seen that men were also victim of domestic violence and definition under Sec. 6 of PWDVA can very well be applied. Impact

of the act becomes more worsen for men when it is been misused as an instrument for blackmail. Similarly Sec. 498- A of IPC is also found misused against men under domestic violence.

This law deal with basic human right and fundamental right of female but strictly prohibit males to get protection under the same situation. The role of media is also is also biased towards women as it hypes the issue of violence against the women but very rarely the issue of domestic violence against the men were discussed.

Three major drawbacks of this law are as follows:

A. *Only women are victims*:

The Act assumes that only women are victims. As per this law, only a woman can file a complaint against a man. A man has no rights under this law. It is pertinent to note that unfortunately according to the Domestic Violence Act, 2005 the aggrieved party is always "any woman". 'Man' does not come within the purview of such definition. Thus, the Aggrieved under the Act is only for women. Even the preamble speaks for "rights of woman." The "respondent" under the definition means any "adult male person", which means a complaint cannot be directed against the female. Provisions like section 20(l) (d) can be misused when we consider that a female partner in a live-in relationship that may have only lasted for a month can claim maintenance allowance under this provision, with no restrictions attached. According to *Section 32(2) of the Act*, the court concludes that the testimony of the victim (woman) is always true and there will be no need for any supportive evidence to prove that an offense has been committed.

This is very dangerous for men, since they are left with absolutely no remedy against the women who can anytime lodge false complaints due to certain grudge or revenge against them.

B. C*hances of misuse*:

There are potential chances of its misuse. If a woman lodges complaint that there was a verbal and emotional abuse by her husband, then she needs to prove nothing. According to *Section 18 of this Act*, a magistrate can take measures to protect the woman from any acts of violence that are even likely to take place in the future.

This means that the woman get an upper hand in protection and the person against whom they have complained can be punished, even though he may not have committed any act of violence and there may be only a chance of occurrence of the violence in the future.

This Act also says that the information regarding an act of domestic violence does not necessarily has to be lodged by the woman herself but can be lodged by any person who has reason to believe that such an act has taken place or is being so committed. That is even the neighbors and relatives can take an initiative on behalf of the victim.

This is a sheer injustice because anyone can lodge a complaint on behalf of the woman without any authentic proof or evidence.

The fact that the complaint lodged by a woman will be always treated as true and genuine opens up potential chances of misuse where innocent men will be accused and implicated of false charges.

C. *Definition of domestic violence:*

The third drawback of the Act is that the definition of domestic violence is not well defined. An insult is also considered as a domestic violence. It is true that differences may arise in a marriage anytime since there may be lack of proper understanding between the couple. Many people try to work on this and try to sort out their differences. While some women approach the court even for minor issues and thus, men feel threatened by the enactment. The act defines harassment from women point of view only. It can also be predicate from the definition of "economic abuse" that if the male partner refuses to pay exorbitant monetary demands of the woman, she can accuse him of domestic violence. When any property is held by a male partner and if the woman has any "interest" in the property, the woman has the right to demand what she wants and not giving her will invite imprisonment. "Verbal" and "emotional" abuse is again very abstruse. There are hypersensitive persons who perceive hurt and imagine insults when none is meant or intended.

- In *Preeti Gupta* v. *State of Jharkhand*, the Supreme Court observed that… 'Serious relook of the entire provision is warranted by the legislature. It is a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The Court observed that the courts are receiving a large number of cases emanating from section 498-A of the Indian Penal Code. It is a matter of common experience that most of these complaints under section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. The courts come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment is also a matter of serious concern. Unfortunately, at the time of filing of the complaint the implications and consequences are not

properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations[23].

- In a case of Sumana Bhasin Vs Neeraj Bhasin the Court has dismissed the domestic violence complaint of a woman saying that,"The testimony of the complainant throws light on the conduct of the complainant and the extent, to which she has falsified and concocted various allegations and has suppressed important facts in order to harass the respondents and had misused the PWDV Act as a tool to extort unjustified money from the respondent no.1 (the husband) for unjustified personal gain. In such glaring circumstances, the Court cannot be expected to be sitting as a mute spectator, where the Law, which is enacted solely for Protection of victims of Domestic Violence, is being misused and abused and made a tool of harassment and extortion[24]." The court also imposed a cost of Rs. 1 lakh on her as exemplary costs.
- In the case of *Mrs. Deepa Lakshmi Saehia Zingade v/s Sachi Rameshrao Zingade (AIR 2010 Bom 16)* petitioner/wife filed a false case against her husband on the ground of 'Husband Having Girl Friend' which was proved as false in a court of law showing the cruelty against husband.
- In the case of *Loha Vs District Educational Officer* the court found no merit in this frivolous writ petition filed by the petitioner, the same is dismissed with cost of Rupees Five Thousand payable to the Chief Justice Relief Fund" and observed that, 'Though this Court is not examining in this case as to whether there is any violation of the provisions of Domestic

[23] Landmark Judgment by Supreme Court of India on Abuse of Anti-Dowry Laws: Preeti Gupta & Anr v. State of Jharkhand & Anr (2010) 7 SCC 667

[24] CC No. 316/3/2007, Sumana Bhasin Vs Neeraj Bhasin Pronouncement on 27.05.2015, Metropolitan Magistrate of Saket Court ,New Delhi

Violence Act and other matrimonial offences, a bare reading of the affidavit shows that the above said provisions were used by the petitioner as a tool to wreak vengeance against her husband and in-laws and since her father-in-law is a Government servant, it has become so easier for her to target him more so as to easily throw him out of the job, by lodging a complaint in order to pressurize him to come to a settlement in one way or the other. Therefore, it cannot be said that there is no misuse of the Act'.[25]

- In the case of *Anil Bharadwaj v Nimlesh Bharadwaj* the wife who refused to have sexual intercourse with the husband without giving any reason was proved as sufficient ground amounting to cruelty against husband[26].
- In the case of *Kalpana v. Surendranath* it had been observed that where a wife who refuses to prepare tea for the husband's friends was declared by the court as cruelty to husband[27].
- In a similar case of Nagesh Dhanapp Chilkanti vs. Sau.Manisha Nagesh Chilkanti (supra) the husband and his family members were acquitted in the complaint filed under section 498-A of IPC read with other provisions of IPC. The Division Bench of the Court has held that filing of false criminal cases against the husband and his family members would very much constitute mental cruelty. The Division Bench further held that the respondent wife was guilty of treating the husband with utmost mental cruelty by filing false criminal case.

[25] (Madras High Court, Loha Vs District Educational Officer, W.P. (MD).No.8646 of 2015, Dt: 08.06.2015).

[26] AIR 1987 Del 111
[27] AIR 1985 All 253

- The Supreme Court in case of Vishwanath Sitaram Agrawal vs. Sau.Sarla Vishwanath Agrawal,[28] has after considering the fact that the wife had filed a complaint under section 498-A of IPC against the husband, her father-in-law and other relatives, who had been acquitted in that case and the said decision of the acquittal had not been assailed before the higher forum, the allegations on that count were incorrect and untruthful and thus it could be unhesitatingly be stated that such an act creates mental trauma in the mind of the husband as no one would like to face a criminal proceeding of this nature on baseless and untruthful allegations.

Various High Courts in the country have also noted that in several instances, omnibus allegations are made against the husband and his relatives and the complaints are filed without proper justification. There is need to exercise caution in the case of arrest of the husband and his relatives. In some of the cases, directions were given by the High Courts for regulating the power of arrest and for taking necessary steps to initiate conciliatory effort at the earliest point of time.

In the case of Chandrabhan vs. State[29] the Court observed that "there is no iota of doubt that most of the complaints are filed in the heat of the moment over trifling fights and ego clashes. It is also a matter of common knowledge that in their tussle and ongoing hostility, the hapless children are the worst victims". The following directions were given to the police authorities:

- FIR should not be registered in a routine manner.
- Endeavour of the police should be to scrutinize complaints carefully and then register FIR.

[28] AIR 2012 SC 2586

[29]Delhi High Court Order dated 4.8.2008 in Bail application No.1627/2008.

- No case under section 498-A/406 IPC should be registered without the prior approval of DCP/Addl. DCP.
- Before the registration of FIR, all possible efforts should be made for reconciliation and in case it is found that there is no possibility of settlement, then, necessary steps should, in the first instance, be taken to ensure return of Stridhan and dowry articles to the complainant.
- Arrest of main accused be made only after thorough investigation has been conducted and with the prior approval of the ACP/DCP.
- In the case of collateral accused such as in-laws, prior approval of
- DCP should be there on the file.

The directives given by the Madras High Court in the case of Tr. Ramiah are as follows[30]:

- Except in cases of dowry death/suicide and offences of serious nature, the Station House Officers of the All Women Police Stations are to register F.I.R. only on approval of the Dowry Prohibition Officer concerned.
- Social workers/mediators with experience may be nominated and housed in the same premises of All Women Police Stations along with Dowry Prohibition Officers.
- Arrest in matrimonial disputes, in particular arrest of aged, infirm, sick persons and minors, shall not be made by the Station House Officers of the All Women Police Stations.
- If arrest is necessary during investigation, sanction must be obtained from the Superintendent of Police concerned by forwarding the reasons recorded in writing.

[30] lawcommissionofindia.nic.in/reports/report243.

- Arrest can be made after filing of the final report before the Magistrate concerned if there is non-cooperation and abscondance of accused persons, and after receipt of appropriate order (Non-Bailable Warrant).
- Charge sheet must be filed within a period of 30 days from the date of registration of the F.I.R. and in case of failure; extension of time shall be sought for from the jurisdiction Magistrate indicating the reasons for the failure.
- No weapon including lathis/physical force be used while handling cases at the All Women Police Stations.
- Complainants/victims should be provided with adequate security /accommodation at Government Home and interest of the children must be taken care of.
- Stridana properties/movables and immovable to be restored at the earliest to the victims/complainants and legal aid may be arranged for them through Legal Services Authority for immediate redressal of their grievances."

Pursuant to this order, the Director-General of Police, Tamil Nadu, issued a circular to the effect that the said orders of the Court should be strictly followed. In the further order dated 4.8.2008, the Court observed that when the I.O. seeks remand of the accused, the Magistrate must examine the necessity therefore and the remand should not be ordered mechanically on the mere request of the I.O. The Magistrate should be satisfied that sufficient grounds exist for directing remand. Further, the Court deprecated the practice of conducting lengthy Panchayats in police stations.

The Supreme Court in case of Rajesh Sharma & ors Vs State of U.P. & Anr commented that, "It is a matter of serious concern that large number of cases continues to be filed under Section 498A alleging harassment of married

women. …This Court had earlier noticed the fact that most of such complaints are filed in the heat of the moment over trivial issues. Many of such complaints are not bona fide. At the time of filing of the complaint, implications and consequences are not visualized. At times such complaints lead to uncalled for harassment not only to the accused but also to the complainant. Uncalled for arrest may ruin the chances of settlement"[31].

The Court was of the opinion of seriously reviewing the related provisions: "We have considered the background of the issue and also taken into account the 243rd Report of the Law Commission dated 30th August, 2012, 140th Report of the Rajya Sabha Committee on Petitions (September, 2011) and earlier decisions of this Court. We are conscious of the object for which the provision was brought into the statute. At the same time, violation of human rights of innocent cannot be brushed aside"[32].

Thus, after careful consideration of the whole issue, the Court issued the following directions:

I. (a) In every district one or more Family Welfare Committees be constituted by the District Legal Services Authorities preferably comprising of three members. The constitution and working of such committees may be reviewed from time to time and at least once in a year by the District and Sessions Judge of the district who is also the Chairman of the District Legal Services Authority.

   (b) The Committees with suitable and willing persons may be constituted out of Para legal volunteers/social Workers/retired persons/wives of working officers/other citizens.

[31] *Supreme Court of India Criminal Appeal no.1265 of 2017 [arising out of special leave petition (crl.)no.2013of2017]Rajesh Sharma &ors Vs State of U.P. & Anr.*
[32] Preeti Gupta (supra)/2017/6593

(c) The Committee members will not be called as witnesses.

(d)Every complaint under Section 498A received by the police or the Magistrate be referred to and looked into by such committee. Such committee may have interaction with the parties personally or by means of telephone or any other mode of communication including electronic communication.

(e) Report of such committee be given to the Authority by whom the complaint is referred to it latest within one month from the date of receipt of complaint.

(f) The committee may give its brief report about the factual aspects and its opinion in the matter.

(g) Till report of the committee is received, no arrest should normally be affected.

(h) The report may be then considered by the Investigating Officer or the Magistrate on its own merit.

(i) Members of the committee may be given such basic minimum training as may be considered necessary by the Legal Services Authority from time to time.

(j) The Members of the committee may be given such honorarium as may be considered viable.

(k) It will be open to the District and Sessions Judge to utilize the cost fund wherever considered necessary and proper.

II. Complaints under Section 498A and other connected offences may be investigated only by a designated Investigating Officer of the area. Such designated officer may be required to undergo training for such duration (not less than one week) as may be considered appropriate. The training may be completed within four months;

III. In cases where a settlement is reached, it will be open to the District and Sessions Judge or any other senior Judicial Officer nominated by him in the district to dispose of the proceedings including closing of the criminal case if dispute primarily relates to matrimonial discord;

IV. A bail application filled with at least one clear day's notice to the Public Prosecutor/complainant, the same may be decided as far as possible on the same day. Recovery of disputed dowry items may not by itself be a ground for denial of bail if maintenance or other rights of wife/minor

V. In respect of persons ordinarily residing out of India impounding of passports or issuance of Red Corner Notice should not be a routine;

VI. It will be open to the District Judge or a designated senior judicial officer nominated by the District Judge to club all connected cases between the parties arising out of matrimonial disputes so that a holistic view is taken by the Court to whom all such cases are entrusted; and

VII. Personal appearance of all family members and particularly outstation members may not be required and the trial court ought to grant exemption from personal appearance or permit appearance by video conferencing without adversely affecting progress of the trial.

CHAPTER -5

Conclusion and Suggestions

*Supreme Court of India has ordered the authorities to stop misuse of the anti-dowry law and other domestic Violence Protection Laws after concerns that a large number of false cases were being filed***.**

The court said that people accused of such harassment should not be arrested until charges were verified. The Court also took notice of the objections against any changes in the law. "We are conscious of the object for which the provision was brought into the statute. At the same time, violation of human rights of innocent cannot be brushed aside," it added. It cannot be lost sight of that ultimate objective of every legal system is to arrive at truth, punish the guilty and protect the innocent. There is no scope for any pre-conceived notion or view. It is strenuously argued that the investigating agencies and the courts start with the presumptions that the accused persons are guilty and that the complainant is speaking the truth. This is too wide available and generalized statement. Certain statutory presumptions are drawn which again are rebuttable. It is to be noted that the role of the investigating agencies and the courts is that of watch dog and not of a bloodhound. It should be their effort to see that an innocent person is not made to suffer on account of unfounded, baseless and malicious allegations[33]. Misuse of Section 498-A in many cases has been judicially noticed by the apex court as well as various High Courts. This has also been taken note of by Parliamentary Committee on Petitions (Rajya Sabha). However, misuse (the extent of which is not established by any

[33] Writ Petition (C) No. 141 of 2005 - Sushil Kumar Sharma vs. Union of India & Others (2005

empirical study) by itself is not a ground to abolish Sec.498-A or to denude the Section of its teeth. The social objective behind the Section and the need for deterrence should be kept in view while at the same time ensuring that the complaints filed with false or exaggerated allegations out of ulterior motives or in a fit of emotion should be curbed.

To conclude the research Work following suggestions are made:

- People making false complaints under Domestic violence laws should be punished if proved guilty. The Domestic Violence Act be amended so as to provide for specific penalty if the complaint is found to be false or with some other ulterior motive.
- The misuse of this law should be made liable to compensate the financial loss suffered by the falsely accused.
- It is suggested that trial under the Protection of Women from Domestic Violence Act- 2005 should be made in pursuant to the Evidence Act instead of the Criminal Procedure Code so that the sole testimony of women is not considered true but it should be backed by proper evidence.
- Protection of Women from Domestic Violence Act should be made gender neutral as there is heavy misuse of this Act. According to our Constitution, we all have equal rights, irrespective of caste, creed, gender etc. This means that the law should offer equal protection to both men and women.
- Domestic violence does not only affect the life of individual but also the lives of their children who are innocent, it doesn't matter violence is against male or female it's violence and so law must stringent for both and not only to men, everyone who commits this heinous crime must be punished.